

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4209 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHEEMSEN D SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR DJ BHATT for Petitioner

MR DP JOSHI, AGP for Respondent No.1

NOTICE SERVED for Respondent No. 2, 3, 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 02/05/98

ORAL JUDGEMENT

The petitioner before this court has been serving on daily wages as a watchman under the respondents herein. The petitioner claims that upon completion of five years as daily wager he is entitled to be absorbed on the work-charged establishment, however, in utter disregard of the petitioner's claim for such absorption, the respondents have absorbed other daily wagers on

work-charged establishment. Feeling aggrieved, the petitioner has preferred this petition.

2. Mr. D.J. Bhatt, the learned advocate appearing for the petitioner has relied upon the Government Resolution at Annexure 'A' to the petition and has submitted that upon completion of five years' service as a daily wager, the petitioner had a right to be absorbed on work-charged establishment. He has also relied on the representation made by the petitioner on 27th July, 1987 and has submitted that on 10th April, 1987 as many as 20 daily wagers were absorbed on the work-charged establishment while though the petitioner had completed five years' service as daily wager he was superseded in the matter of such absorption. He has also relied upon the statements made in the affidavit-in-reply made by one Mr. A.R. Parmar, Executive Engineer, Central Workshop Division (R & B) on 20th July, 1988. He has referred to the statements made in Paragraph 5 to the petition and has submitted that, in fact the petitioner was found to be eligible for absorption on work-charged establishment from 1st October, 1987 and his case for such absorption was also recommended to the higher authorities. He has, therefore, submitted that the petitioner is entitled to a writ of mandamus from this court directing the respondents to absorb the petitioner on work-charged establishment with effect from 1st October, 1987 and has also prayed for the consequential reliefs.

3. The Government Resolution at Annexure 'A' to the petition provides that as and when occasion for appointment on work-charged establishment arises, the first preference should be given to the daily wagers; the preference should be given to the daily wagers who have put longer service; for being eligible for absorption on work-charged establishment a person must have served atleast for five years on daily wages; the daily wager must comply with all the eligibility criteria like educational qualifications, experience and age. However, in respect of daily wagers who have put long service may be given the benefit of relaxation in age. In my view, the above referred Resolution merely enables the respondents to make the appointment on work-charged establishment from amongst the daily wagers subject to the terms and conditions laid down in the said Resolution. The same does not confer any right upon a daily wager for appointment on work-charged establishment on completion of five years' service on daily wages. The petitioner is, therefore, not right in contending that on completion of five years' service on daily wages he had a right to absorption on work-charged establishment. All

that the petitioner could have claimed is a right to be considered for appointment on work-charged establishment after completion of five years' service as and when such appointment is required to be made. On perusal of the counter affidavit, it does appear that some daily wagers were appointed on work-charge establishment, who were otherwise eligible, as helper. Obviously, the petitioner who was serving as a watchman could not have been appointed as a helper on work-charged establishment. The petitioner's case for appointment on work-charged establishment could have been considered as and when occasion for appointment of a watchman on the work-charged establishment arose. The deponent has in no uncertain terms stated that the petitioner had become eligible for appointment on work-charged establishment on 1st October, 1987 and his case for appointment on work-charged establishment had been referred to the higher authorities. It is not the case of the petitioner that after his being eligible for appointment on work-charged establishment any person junior to him as a daily wager had been appointed as a watchman superseding the claim of the petitioner. It, therefore, appears that the grievance of the petitioner is misplaced and the petition is misconceived. However, in the event the petitioner is superseded and any watchman junior to him on daily wages establishment is appointed on the work-charged establishment, the petitioner shall have a right to challenge the same.

4. The petition is, therefore, dismissed. Rule is discharged. There shall be no order as to costs.

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